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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARY HARDEMAN,

Defendant.

No. CR 10-0859 RS

DEFENDANT'S PRETRIAL
CONFERENCE STATEMENT

Honorable Richard Seeborg
July 10, 2013
1:00 p.m.

DEFENDANT'S PRETRIAL STATEMENT

STATEMENT

Pursuant to Criminal Local Rule 17.1-1, Defendant Gary Hardeman respectfully submits this Pretrial Conference Statement.

1. Statements or Reports of Witnesses

The Court previously ordered the production of all outstanding disclosures, including those required by “Jencks” by June 12, 2013. The government has not indicated whether it intends to use any statements or reports of witnesses under the Jencks Act, 18 U.S.C. § 3500, or Federal Rule of Criminal Procedure 26.2, or whether required disclosure of such statements or reports is complete.

2. Grand Jury Testimony

The government has disclosed grand jury testimony of certain witnesses. Mr. Hardeman is unaware if there is any undisclosed grand jury testimony.

3. Exculpatory or Other Favorable Evidence

The Court previously ordered the production of all outstanding disclosures, including those required by “Brady/Giglio” by June 12, 2013. The government has not indicated whether required disclosure of exculpatory and other evidence favorable to the defendant on the issue of guilt or punishment is complete. Mr. Hardeman has separately filed a motion in limine specifically addressing the issue of material that must disclosed pursuant to *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991).

4. Stipulations of Fact

Mr. Hardeman has offered to stipulate that he was identified by the witnesses who testified at a videotaped deposition in Mexico City pursuant to Federal Rule of Criminal Procedure 15. The parties have also discussed other potential stipulations.

5. Court Appointed Interpreters

Mr. Hardeman expects that no interpreters will be required.

6. Dismissal of Counts

The government has not indicated any intention to dismiss either of the counts in the indictment against Mr. Hardeman, although that would be welcomed.

1 **7. Joinder and Severance**

2 Mr. Hardeman has separately moved the Court in limine to bifurcate the two counts in
3 the indictment for trial.

4 **8. Informers, Identification Evidence and Prior Convictions**

5 The government has not indicated that it intends to present any by informers. Mr.
6 Hardeman has separately moved the Court in limine to exclude evidence of photo-spread
7 identifications by the witnesses who testified at a videotaped deposition in Mexico City pursuant
8 to Federal Rule of Criminal Procedure 15. Mr. Hardeman has also separately moved the Court
9 in limine under Federal Rules of Evidence 403, 404(b), 410, and *United States v. Nguyen*, 465
10 F.3d 1128, 1131 (9th Cir. 2006), to exclude evidence of his prior withdrawn pleas in 1980 and
11 1986, the resulting expunged convictions, and the alleged conduct underlying those charges. Mr.
12 Hardeman is also filing concurrently with this memorandum an opposition to the government's
13 motion in limine to admit evidence of prior conduct under Federal Rules of Evidence 404(b),
14 413 and 414.

15 **9. Witness Lists**

16 The government has not yet disclosed any witness list to the defense. The government
17 has noticed three expert witnesses. Mr. Hardeman has moved in limine to exclude the
18 government's psychiatric expert witnesses. Mr. Hardeman has also noticed an expert witness,
19 whom the government has moved to exclude. In addition, Mr. Hardeman has numerous
20 witnesses under court-ordered defense subpoena, and consequently proposed to the government
21 that the parties agree to an early exchange of witness lists in order to minimize inefficiencies at
22 trial, but the government has not yet responded to that proposal.

23 **10. Exhibit Lists**

24 The government has not yet disclosed any exhibit list.

25 **11. Pretrial Resolution of Objections to Exhibits or Testimony**

26 The government has not yet indicated what exhibits it intends to offer at trial. Both
27 parties have filed numerous motions in limine raising objections to possible exhibits and
28 testimony.

1 **12. Controverted Points of Law**

2 Apart from issues raised in concurrently filed motions in limine, Mr. Hardeman is not
3 aware of any outstanding controverted points of law.

4 **13. Scheduling of the Trial and Witnesses**

5 Trial is scheduled to start with jury selection on July 19, 2013. The Court has directed
6 that Mr. Hardeman be prepared to call his first witnesses on July 29, 2013. The Court has also
7 directed Mr. Hardeman to work with the U.S. Marshals in scheduling the testimony of defense
8 witnesses to minimize cost and inconvenience, recognizing that doing so might result in some
9 trial days having too few witnesses to fill the entire court day (or none at all). The Court has
10 indicated that it will not deem the defense to have rested in the event that such a situation occurs.

11 **14. Questionnaires, Voir Dire, Peremptory and Cause Challenges, and**
12 **Instructions**

13 After careful consideration, Mr. Hardeman does not request a jury questionnaire. Mr.
14 Hardeman has proposed voir dire questions and jury instructions by separate filing. Mr.
15 Hardeman does not anticipate any issues relating to the exercise of peremptory and cause
16 challenges.

17 **15. Other Matters Tending to Promote a Fair and Expeditious Trial**

18 Mr. Hardeman is not aware of any matters which may tend to promote a fair and
19 expeditious trial.

20 Dated: July 3, 2013

21 Respectfully submitted,

22 STEVEN G. KALAR
23 Federal Public Defender

24 /s/

25 _____
26 DANIEL P. BLANK
27 Assistant Federal Public Defender
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